

jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

4. Plaintiff CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of those officials. CREW seeks to empower citizens to have an influential voice in government decisions and in the governmental decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation and advocacy. As part of its research, CREW uses government records made available to it under the FOIA.

5. CREW has invested considerable organizational resources in pushing the U.S. government to take ethics issues seriously. CREW monitors closely the laws and rules applicable to government agencies.

6. CREW is harmed by the Army's failure to comply with the FOIA because that failure harms CREW's ability to provide full, accurate and current information to the public on a matter of public interest. 5 U.S.C. § 552(a)(6)(c). Absent this critical information, CREW cannot advance its mission of educating the public to ensure that the public continues to have a vital voice in government decisions.

7. CREW will analyze the information it receives that is responsive to its request and will share it with the public through memoranda, reports, or press releases. In addition, CREW will disseminate any documents it acquires from its request to the public through an interactive

website that CREW has founded, www.governmentdocs.org, where members of the public can analyze and comment on public documents. CREW's own website, www.citizensforethics.org, contains links to thousands of pages of documents CREW has acquired from multiple FOIA requests as well as documents relating to CREW's FOIA litigation.

8. Defendant Army is an agency within the meaning of 5 U.S.C. § 552(f). Defendant is the federal agency with possession and control of the requested records and is responsible for fulfilling CREW's FOIA request.

STATUTORY FRAMEWORK

The Freedom of Information Act

9. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

10. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination whether or not to fulfill the request and of the requester's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

11. An agency must respond to a FOIA appeal within 20 working days, notifying the appealing party of the agency's determination to either release the withheld records or uphold the denial. 5 U.S.C. § 552(a)(6)(A)(ii).

12. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal, but must provide notice and must also provide "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B).

13. The FOIA also requires each agency to promulgate regulations specifying a fee

schedule for the processing of FOIA requests and establishing procedures and guidelines for the waiver or reduction of fees. 5 U.S.C. § 552(a)(4)(A). Defendant Army's fee waiver regulations are found at 32 C.F.R. Sec. 518.19(d). Under the FOIA, agencies should produce documents at no charge to the requester or at a reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

14. This Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

15. The FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the court makes a written finding that "the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously," a disciplinary investigation is triggered. 5 U.S.C. § 552(a)(4)(F).

FACTS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF

16. On April 17, 2009, CREW sent a FOIA request to the Army seeking documents relating to the diagnosis of Post Traumatic Stress Disorder ("PTSD") in Army personnel. Letter from Melanie Sloan, CREW, to Department of the Army, FOIA Request (April 17, 2009) (attached as Exhibit 1). Specifically, CREW requested records "from March 19, 2003, to the present relating to any and all guidance given to any Army staff, consultants and/or other recipient(s) of federal funds regarding the diagnosis of post traumatic stress disorder" *Id.*

CREW's request includes, but is not limited to, guidance "regarding the diagnosis of post traumatic stress disorder ("PTSD"), alternative diagnoses that should or could be made in lieu of diagnosing PTSD and guidance on PTSD diagnoses as they relate to benefit appeals. Id. Please note that CREW is not seeking records about individual soldiers or individual soldier applications for benefits. CREW also requested a waiver of fees associated with the processing of its request, in light of published reports quoting an Army psychologist as stating, "Not only myself, but all clinicians up here are being pressured not to diagnose PTSD and diagnose anxiety disorder instead...I am under a lot of pressure not to diagnose PTSD... It is not fair. I think it is a horrible way to treat soldiers...". Id. at 2-3.

17. By letter dated April 23, 2009 the Freedom of Information and Privacy Division ("FOIP") of the Department of Army acknowledged receipt of CREW's request and informed CREW that it is the referral point and policy office for the Department of Army Freedom of Information Act and Privacy Act entities. Further the letter notified CREW that its FOIA request had been forwarded to the Joint Services Records Research Center for action and direct response to CREW. April 23, 2009 Army FOIP Division letter attached hereto as Exhibit 2.

18. By letter dated April 28, 2009 the U.S. Army & Joint Services Records Research Center ("JSRRC") informed CREW that it "has no official role in the diagnosis of PTSD or in the adjudication of PTSD claims", and that "the function of the PTSD unit is to provide documented information in support of veterans' involvement in stressful incidents while serving in the military. Our office does not provide medical treatment or guidance concerning treatment of PTSD." JSRRC provided CREW with no records as a result of this letter. April 28, 2009 Army JSRRC letter attached as Exhibit 3.

19. By letter dated June 2, 2009, CREW administratively appealed each of these two determinations and requested that the Army search for responsive records in the Army components most likely to hold them, such as the Army's Department of Behavioral Health, part of the U.S. Army Medical Command. Letter from Daniel S. Alcorn, Counsel to Department of Army Freedom of Information and Privacy Division and U.S. Army & Joint Services Records Research Center (June 2, 2009) ("Appeal Letter") (attached as Exhibit 4). CREW explained that news reports had described statements by a member of the medical staff of the Army's Department of Behavioral Health that Army doctors "are under a lot of pressure to not diagnose PTSD," and "all of the clinicians up here are being pressured to not diagnose PTSD and to diagnose anxiety disorder NOS [instead]." The Army's Department of Behavioral Health is part of the Army's Medical Command according to Army websites. CREW informed the Army that a likely place to locate records responsive to CREW's request would be the Army's Medical Command and its Department of Behavioral Health since these components appear to be involved in the diagnosis and treatment of PTSD. Appeal letter, Page 2.

20. The U.S. Army & Joint Services Records Research Center responded to CREW's administrative appeal with a short letter dated June 15, 2009, stating "The Joint Services Records Research Center (JSRRC) does not maintain records in regard to the diagnosis of PTSD or the adjudication of PTSD claims. The JSRRC is not involved in the allocation of federal funds; nor do we provide opinions, medical or clinical treatment, recommendations, evaluations, conclusions, or decisions concerning the merits of PTSD claims." June 15, 2009 JSRRC letter, Exhibit 5 hereto.

21. As of the filing of this complaint, the Army's Freedom of Information and Privacy

Division has not responded to CREW's administrative appeal, nor has it provided any documents responsive to CREW's request. Further, CREW has received no communication from Army's Medical Command or its Department of Behavioral Health, nor has it received any records responsive to its request from any Army component.

22. CREW has now exhausted its administrative remedies with respect to the processing of CREW's FOIA request. See, e.g., Judicial Watch v. Rossoti, 326 F.3d 1309, 1310 (D.C. Cir. 2003), citing 5 U.S.C. § 552(a)(6)(C).

PLAINTIFF'S CLAIMS FOR RELIEF

CLAIM ONE

(Failure to Produce Records Under the FOIA)

23. Plaintiff realleges and incorporates by reference all preceding paragraphs.

24. Plaintiff properly asked for records within the Army's control.

25. Plaintiff is entitled by law to access to the records requested under the FOIA, unless defendant makes an explicit and justified statutory exemption claim.

26. The Army has produced no records to CREW.

27. Therefore, the Army violated FOIA's mandate to release agency records to the public by failing to release the records as plaintiff specifically requested. 5 U.S.C. §§ 552(a)(3)(A), 552(a)(4)(B).

CLAIM TWO

(Improper Denial of Fee Waiver)

28. Plaintiff realleges and incorporates by reference all preceding paragraphs.

29. Plaintiff has demonstrated that it is entitled to a waiver of fees associated with processing its FOIA request because disclosure of responsive records will likely contribute

significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the plaintiff.

30. Therefore, defendant violated the FOIA and defendant's own regulations when it has failed to grant CREW a fee waiver. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 518.19(d).

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Declare that the Army has violated the Freedom of Information Act by failing to lawfully satisfy plaintiff's FOIA request of April 17, 2009;
- (2) Order the Army to release immediately all records responsive to plaintiff's FOIA request;
- (3) Declare that the Army violated the Freedom of Information Act and agency regulations when it failed to grant plaintiff a waiver of all fees associated with the processing of its FOIA request and declare that plaintiff is entitled to a fee waiver;
- (3) Award plaintiff its reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

_____/s/_____
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